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**FEDERAL RESPONSIBILITY FOR POLICE ACCOUNTABILITY
THROUGH CRIMINAL PROSECUTION***

STEVEN PURO**

ABSTRACT

Federal criminal prosecution of law enforcement officers' violations of individuals' civil rights is a traditional way to remedy law enforcement misconduct. The U.S. Department of Justice has significant interactions with state and local officials in these processes. There was increased emphasis on U.S. Department of Justice Civil Rights Division, Criminal Section law enforcement criminal prosecutions in the last five years of the period from fiscal year 1985 to fiscal year 2001. Patterns of Criminal Section behavior are observed during this seventeen-year period and the most recent five years. This article demonstrates structural and legal problems faced by federal prosecutors bringing suit against law enforcement officials under 18 U.S.C. §§ 241 and 242.

I. INTRODUCTION

Intergovernmental relations between the United States and state governments concerning police accountability are central to enacting effective societal control over police conduct. These relationships reflect dynamic interactions between the federal and state governments. Control of police has been a local and state function, and the control of police accountability has not been nation-centered. Federal, state and local governments' activities overlap to control police accountability. This article will uncover United States Department of Justice Civil Rights Division, Criminal Section (hereinafter referred to as "Criminal Section") prosecutorial patterns for law enforcement misconduct during the seventeen years between fiscal year 1985 and fiscal year 2001. The utility of these prosecutions and Federal Bureau of Investigation

* This paper is a substantially revised version of my presentation at the symposium entitled *Law Enforcement: New Approaches to Insuring Police Accountability* at the St. Louis University School of Law on April 5, 2002. I would like to especially thank Roger Goldman for extensive discussion of these issues. I also thank Matt Piant, Margaret McDermott, Laura Schulz and Matt Waltz for their assistance in preparation of this article.

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(FBI) investigations to attain law enforcement accountability will be analyzed. In an article in this journal, Roger Goldman proposes interactions between the United States Department of Justice, the FBI, and state and local governmental officials that could enhance law enforcement accountability in the United States.

Inter-connectedness among levels of government focuses analysis upon the power distribution within particular intergovernmental relationships. Joel Handler argues that federalism is the allocation and reallocation of authority between the states and the federal government.¹ The federal government has authority to control law enforcement misconduct through prosecutions mainly by the Criminal Section and the United States Attorneys. Both the Criminal Section and U.S. Attorneys can prosecute law enforcement cases on their own. Cooperative efforts between them vary on an annual basis in fiscal years 1985 to 2001. In this period, the percentage of cases where U.S. Attorneys participated in Criminal Section prosecutions ranged from eight percent to sixty-three percent of cases in a year.²

This article will focus upon processes and patterns of Criminal Section prosecutions of law enforcement officials' criminal conduct that violates individuals' civil rights. The time period from fiscal year 1985 to fiscal year 2001 is examined for main trends, and there is additional emphasis on the most recent five years. The article examines institutional, structural and legal problems faced by federal prosecutors bringing suit against law enforcement officials under 18 U.S.C. §§ 241 and 242. Interaction between the U.S. Department of Justice, its Criminal Section, and other federal and state officials during fiscal years 1985 to 2001 will also be discussed.

II. U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, CRIMINAL SECTION PROSECUTION OF POLICE MISCONDUCT

Citizens of a democracy should expect their police not only to enforce the law,
but to respect it.³

1. JOEL F. HANDLER, *DOWN FROM BUREAUCRACY: THE AMBIGUITY OF PRIVATIZATION AND EMPOWERMENT* 63 (1996).

2. CRIMINAL SECTION, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, *SUMMARY OF CRIMINAL SECTION ACTIVITIES (FY1985 - FY2001)* (n.d.) [hereinafter *SUMMARY*], included in a facsimile from Albert N. Moskowitz, Chief, Criminal Section, Civil Rights Division, U.S. Dep't of Justice, to Roger Goldman, Professor of Law, Saint Louis University (Mar. 4, 2002) (on file with author). See Table 1.

3. Christopher E. Stone, *Introduction* to ALEXIS AGATHOCLEOUS, *VERA INSTITUTE OF JUSTICE, PROSECUTING POLICE MISCONDUCT: REFLECTIONS ON THE ROLE OF U.S. CIVIL RIGHTS* 3 (1998).

Federal criminal prosecution of law enforcement officials for civil rights and constitutional violations under 18 U.S.C. §§ 241 and 242 is a traditional remedy for law enforcement misconduct.⁴ The Criminal Section can receive complaints and engage in prosecutorial activities against local, state, and federal law enforcement officials who abuse their power and violate the civil rights of civilians.⁵ Prosecutions have been brought against police officers, deputy sheriffs, state and federal correctional officers, state constables, and federal immigration officials.⁶

The U.S. Department of Justice Civil Rights Division has the major responsibility in the federal government for the enforcement and prosecution of federal civil rights law based upon federal statutes and additional authority granted by the Attorney General.⁷ In addition, the Division, in cooperation with the FBI, investigates and prosecutes hate crimes, discrimination in fair housing and fair practices in employment, and enforcement of the Americans with Disabilities Act.⁸ Some particular sections within the Division have specialized activities. The Criminal Section's broad responsibility includes enforcement of criminal civil rights statutes concerning interference with federally protected activities,⁹ conspiracy to injure citizens in the exercise of federal rights,¹⁰ interference with fair housing activities,¹¹ and willful deprivation of federal rights under color of law.¹² The Special Litigation Section's main civil enforcement responsibilities are for the Freedom of

4. This article will focus upon 18 U.S.C. §§ 241 & 242 (2000). Federal officers can also be prosecuted under the provisions governing search warrants and warrantless searches in 18 U.S.C. §§ 2234-2236 (2000).

5. *See generally Oversight Hearing on the Civil Rights Div. Before the Subcomm. on the Const. of the House Judiciary Comm.*, 106th Cong. (2000) (testimony of Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice), 2000 WL 1115447 (F.D.C.H.) ; CRIMINAL SECTION, CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, OVERVIEW, <http://www.usdoj.gov/crt/crim/overview.htm> (last visited Oct. 14, 2002). Police misconduct that has brought prosecution includes police brutality against citizens, use of force to extract information and coerced confessions, illegal stops of motorists and pedestrians, and racial profiling of select individuals for investigation and detention.

6. *See generally Oversight Hearing on the Civil Rights Div. Before the Subcomm. on the Const. of the House Judiciary Comm.*, *supra* note 5; CRIMINAL SECTION, *supra* note 5.

7. *See* CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, ACTIVITIES AND PROGRAMS, at <http://www.usdoj.gov/crt/activity.html> (last visited Feb. 2003).

8. *Id.*

9. 18 U.S.C. § 245 (2000).

10. 18 U.S.C. § 241 (2000).

11. 42 U.S.C. § 3631 (2000).

12. 18 U.S.C. § 241 (2000). The Criminal Section also has authority under 18 U.S.C. § 247 (2000) (damage to religious property), 18 U.S.C. § 248 (2000) (Freedom of Access to Clinic Entrances) and 18 U.S.C. § 1584 (2000) (involuntary servitude). *See generally* CRIMINAL SECTION, *supra* note 5.

Access to Clinic Entrances Act, and for the prevention of patterns or practices of departmental police misconduct under 42 U.S.C. § 14141.¹³ In any given fiscal year, the Assistant Attorney General emphasizes certain programs within the Division. For example, in 1998 U.S. House Judiciary Committee testimony, Bill Lann Lee said: “I plan to focus on three priorities: fighting hate crimes, battling housing and lending discrimination, and attacking discrimination against persons with disabilities.”¹⁴

Federal prosecution of criminal civil rights violations is necessary to allow the national government to supervise federal, state, and local law enforcement officials. James P. Turner, Deputy Assistant Attorney General for the Civil Rights Division from 1969 to 1993, argues:

[T]he federal government program has addressed significant violations of norms of law enforcement conduct, see, e.g., the Rodney King case where the federal government prosecuted law enforcement officers after a failed state prosecution, established legal benchmarks for law enforcement conduct and encouraged state authorities to meet their primary responsibilities under the federal system.¹⁵

The main avenue for the Criminal Section is individual complaints against law enforcement officers for using their positions to deprive individuals of constitutional rights, such as the right to be free from unwarranted assaults, illegal arrests and searches, and the right to be free from deprivation of property without due process of law.¹⁶ Meritorious complaints advance to the

13. CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, SPECIAL LITIGATION SECTION, at <http://www.usdoj.gov/crt/split/index.html>.

14. *Oversight of Civil Rights Division of the United States Department of Justice: Hearing Before the Subcomm. on the Constitution of the House Comm. on the Judiciary*, 105th Cong. 4-5 [hereinafter *Oversight of Civil Rights Division*] (statement of Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice).

15. See ALEXIS AGATHOCLEOUS, VERA INSTITUTE OF JUSTICE, PROSECUTING POLICE MISCONDUCT: REFLECTIONS ON THE ROLE OF U.S. CIVIL RIGHTS 13 (1998).

16. See CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, ACTIVITIES AND PROGRAMS, at <http://www.usdoj.gov/crt/activity.html> (Aug. 2002). The Criminal Section's path from complaint to trial is described in CRIMINAL SECTION, *supra* note 5. It describes the complaint and investigation as follows:

Each complaint received is analyzed to decide whether an investigation is appropriate. If an investigation is recommended, the FBI (the primary investigative agency) conducts the investigation by interviewing witnesses and collecting evidence and sends its report both to the responsible attorney within the Section, as well as to the U.S. Attorney's Office with responsibilities for federal prosecution within the geographic area where the incident occurred. When the investigation is completed, the prosecutors must then decide whether there is sufficient evidence to prove a federal violation and legal authority to pursue the case in federal court.).

Id.

level of an FBI investigation. If sufficient evidence is developed, then a grand jury indictment and criminal prosecution may be brought.

In general, in the seventeen years between fiscal year 1985 and fiscal year 2001, the Criminal Section received 10,000 to 12,000 law enforcement and non-law enforcement complaints annually, of which about 3000 advanced to FBI investigations.¹⁷ As a result of these investigations, annually about 60 grand jury presentations were authorized, and about 60% of those presentations resulted in charges being filed.¹⁸ One-half or more of the new grand juries convened annually relate to law enforcement matters.¹⁹ In the process of obtaining these prosecutions, the U.S. Department of Justice coordinates activities with local U.S. Attorneys and FBI agents to enforce civil rights law and enhance litigation of police misconduct and other criminal cases. Local U.S. Attorneys have knowledge about their community, which can be a source of new litigation, and they maintain relationships with local and state police agencies. The Criminal Section has trial experience and knowledge of the national dimension of federal prosecutions.²⁰

The Criminal Section and the FBI coordinate the processing of complaints and the conducting of investigations for purposes of bringing prosecutions. The FBI does not undertake an investigation of a complaint without authorization from the Criminal Section. When complaints are received by the FBI field officers or FBI headquarters, they are forwarded to the Criminal Section. The Criminal Section authorizes a preliminary investigation only after it determines that there is a colorable case. The results of the preliminary investigation are reported to FBI headquarters,²¹ then forwarded to the Criminal Section, which decides whether to bring it to a grand jury. The Criminal Section's main criterion is whether they can prove beyond a reasonable doubt that the accused officer intentionally violated the defendant's civil rights. The Criminal Section may instruct that a further investigation be

17. SUMMARY, *supra* note 2. The data contained in the SUMMARY is reproduced in Table 1 within this article. With respect to complaints generally, they can occur in a variety of forms: citizen correspondence, phone calls, or personal visits to the headquarters of the Department of Justice, to the local U.S. Attorney's Office, or to the FBI and their offices. CRIMINAL SECTION, *supra* note 5.

18. SUMMARY, *supra* note 2. Federal grand juries can bring indictments for felonies and misdemeanors. See 18 U.S.C. § 241 (2000) (requiring that evidence be presented to a grand jury in felony cases); 18 U.S.C. § 242 (2000) (allowing misdemeanor indictments to be brought).

19. SUMMARY, *supra* note 2.

20. See U.S. DEP'T OF JUSTICE, U.S. ATTORNEY'S MANUAL §§ 8-3.100 - 8-3.130 (1998) [hereinafter USAM] (illustrating further elements of coordination of activities between the Civil Rights Division and United States Attorneys' Offices).

21. See *id.* at § 8-3.110.

conducted. The U.S. Attorneys may decline cases that arise in their office by orally advising the FBI about that decision.²²

This study will analyze the Criminal Section's activities from fiscal year 1985 to fiscal year 2001 to determine the scope of those prosecutorial activities concerning law enforcement officers. Data will demonstrate that the Criminal Section adopts a careful prosecution program centering upon a limited number of grand juries and trials.²³ The difficulty of obtaining successful law enforcement prosecution and other patterns of Criminal Section activities will be examined. The data will show substantially greater success in the percentage of Criminal Section prosecutions in non-law enforcement cases than law enforcement cases. This information and analysis can suggest new paths for state and federal authorities to address societal issues of law enforcement misconduct.

III. CRIMINAL SECTION PROSECUTION STRATEGIES CONCERNING POLICE MISCONDUCT

The Criminal Section prosecution strategies involve interactions between the federal government and the states. States are key actors in bringing lawsuits against law enforcement officials. Turner indicates the established Department of Justice policy is to require that efforts be made to encourage state officials to take appropriate action under state law and not act as national overseers of routine police measures.²⁴ The U.S. Attorney's Manual shows that federal policy dictates that federal prosecutors suspend their federal civil rights prosecutions if local charges are filed.²⁵ Also, the government often refrains from actively investigating a viable case unless the state declines prosecution, and by that time evidence and witnesses may be lost.²⁶

The Department mainly considers serious violations that have not been adequately redressed by state authorities, either because there was no prosecution, no conviction, or because the conviction resulted in a plainly inadequate sentence.²⁷ This idea is developed further in the Civil Rights Division Activities and Programs website which argues:

Because almost any matter which presents a violation of federal law is also a matter involving a local or state law violation, deference is given to local

22. See *id.* at § 8-3.150 (concerning declinations of enforcement of civil rights statutes).

23. Cf. AGATHOCLEOUS, *supra* note 15, at 15 (“[T]he Division . . . chooses when and where Washington should intervene and prosecute police misconduct.”).

24. See James P. Turner, *Police Accountability in the Federal System*, 30 MCGEORGE L. REV. 991, 993, 1007 (1999).

25. See USAM, *supra* note 20, at § 9-2.031.

26. See Alexa P. Freeman, *Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality*, 47 HASTINGS L.J. 677, 720-21 (1996).

27. See Turner, *supra* note 24, at 993.

prosecutions. But where there is no local action or where the results of the state or local proceedings are insufficient to vindicate federal interests, a federal prosecution may be brought.²⁸

In fact, an official U.S. Department of Justice publication says: “[O]ften, local authorities will take the lead in prosecuting violent conduct under state statutes, even though such conduct also constitutes a violation of federal civil rights law. In such cases, the Department of Justice presumes state prosecutors to vindicate federal interests.”²⁹ Christopher Stone, Director of Vera Institute, reinforces this analysis by stating: “The Civil Rights Division is not the most direct mechanism of police oversight in the nation, nor is it the primary mechanism on which the people of any single jurisdiction rely. . . .”³⁰

Recognition must be given to the fact that the federal government lacks adequate resources because they have a small number of prosecutors in the Criminal Section. In 1996, this Section had approximately thirty attorneys whose caseloads were divided among all federal civil rights crimes.³¹ More specific information showed that in 1998, there were only thirty-two full-time attorneys who worked on police misconduct cases in the Criminal Section.³²

Standards for FBI investigations also give priority to state and local prosecutions when state or local criminal charges are filed against the subject(s) of an investigation. In these instances, the FBI’s policy calls for the investigation to be suspended.³³ In investigations of law enforcement officers’ criminal violations of individuals’ civil rights, FBI officers face conflicting demands between U.S. Department of Justice policies and the FBI’s close working relationships with local and state police officers and prosecutors. For example, when state and local prosecutors subpoena FBI agents to testify, the FBI will resist compliance with the subpoena from their investigations in state, local, or federal proceedings where the United States is not a party unless the FBI agent personally observed the behavior.³⁴ Instructions in the United States Attorneys’ Manual concerning enforcement of civil rights statutes state: “In such cases, where state and local authorities undertake vigorous prosecution in

28. See CIVIL RIGHTS DIV., *supra* note 16.

29. See CRIMINAL SECTION, *supra* note 5.

30. See Stone, *supra* note 3, at 3.

31. Freeman, *supra* note 26, at 721.

32. HUMAN RIGHTS WATCH, SHIELDED FROM JUSTICE: POLICE BRUTALITY AND ACCOUNTABILITY IN THE UNITED STATES 95 (1998).

33. U.S. DEP’T OF JUSTICE, CIVIL RIGHTS RESOURCE MANUAL sec. 47 (Oct. 1997). Subsection B provides conditions for exceptions to this procedure. *Id.*

34. USAM, *supra* note 20, at § 8-3.180; see also 28 C.F.R. § 16.22 (West, WESTLAW through Oct. 1, 2002).

state courts, it is Department policy to cooperate fully with the local prosecutor.”³⁵

Relationships between local U.S. Attorneys and the U.S. Department of Justice have limited federal prosecutorial activity. Prior to the late 1990s, before U.S. Attorneys began an investigation or prosecution, they had to submit cases concerning law enforcement officers’ criminal violations of individuals’ civil rights to Department of Justice headquarters. Moreover, prior to 1990 the norm was for the Civil Rights Division to prosecute cases through the national office. This practice often restricted the number of cases based upon national office capabilities, and often delayed prosecution of other cases.³⁶ By the mid-1990s this practice changed. In 1998, Bill Lann Lee, then Acting Assistant Attorney General for Civil Rights, stated that the norm at that time was for the Civil Rights Division to prosecute police misconduct cases jointly with local U.S. Attorneys’ offices.³⁷

The numbers in Table 2 (below) are indicative of that change in behavior, showing a significant increase in the number of law enforcement defendants from fiscal year 1996 to fiscal years 1997 and 1998. There was a doubling of these defendants between fiscal year 1996 (33 defendants) and fiscal year 1997 (67 defendants); and that level was maintained in fiscal year 1998 (74 defendants).

Successful federal criminal prosecution against individual officers is difficult to accomplish. Major difficulties for prosecutorial success are: standards of proof, juries’ willingness to believe the police and the justification for their activities, and, as noted earlier, Department of Justice relationships with the FBI and state and local police departments. From 1957 to 1994, the Criminal Section’s dominant and almost exclusive avenue against police brutality and violations of citizens was a criminal prosecution against individual officers under 18 U.S.C. §§ 241 and 242. A civil component for legal action was added through the 1994 Violent Crime Control and Law Enforcement Act, especially with its pattern-or-practice section, to take action against entire police departments.³⁸ Since 1995, criminal prosecution under §§ 241 and 242 remains a significant element of the Division’s activities.

35. USAM, *supra* note 20, at §§ 8-3.170 & 8-3.180; *see also* C.F.R. §§ 16.22 & 16.26(c) (West, WESTLAW 2002). The FBI will not provide information from their investigations in state and local proceedings or federal proceedings where the United States is not a party, unless the FBI agent personally observed the behavior. USAM, *supra* note 20, at §§ 8-3.170 & 8-3.180.

36. *Oversight of Civil Rights Division*, *supra* note 14.

37. AGATHOCLEOUS, *supra* note 15, at 15.

38. 42 U.S.C. § 14141 (West, WESTLAW 2002).

John Jacobi indicates difficulties for federal prosecution of police misconduct cases.³⁹ In order to bring a case under § 242, the prosecutor must provide evidence to prove the officer's specific intent. The "specific intent" has often translated into proving that the officer had the specific purpose of depriving an individual of a constitutional right. He quotes Paul Chevigny:

To get a conviction, the [federal] prosecution must prove "specific intent" on the part of the local official to violate a federal right, as distinct, for example, from intent simply to assault the victim. . . . The usual difficulties in prosecuting police in any system, combined with the high standard of intent and the deference to local prosecutors, mean that federal criminal law contributes little to the accountability of local police for acts of violence.⁴⁰

Heads of the Criminal Section and veteran Criminal Section attorneys regularly explain the low rate of prosecution by indicating that law enforcement misconduct cases are difficult to bring to trial, and convincing jurors to convict is difficult.⁴¹

Prosecutors at all government levels often lack the willingness and resources to screen complaints of law enforcement misconduct. In a report by Human Rights Watch, it is suggested that when asked to prosecute an officer, prosecutors face an impossible conflict of interest between their desire to maintain working relationships and their duty to investigate and prosecute police brutality.⁴² The number of complaints against police officers in a large urban area makes it difficult to prosecute in any but the most egregious cases.⁴³ Other reasons contributing to the low number of law enforcement prosecutions include the fact that prosecutors must rely on officers who may have divided loyalties.⁴⁴ Fellow officers are reluctant to vigorously pursue investigations of other officers' misconduct; many officers follow a code of silence that frustrates the investigation. Often police refuse to cooperate or testify against fellow officers. Many times there are no witnesses other than the victim, and then it becomes a credibility issue between a police officer and the victim. Victims usually have a criminal record or were committing a crime when the civil rights violation occurred. Also, many times the victims were

39. John V. Jacobi, *Prosecuting Police Conduct*, 2000 WIS. L. REV. 789, 809 (2000); see also Paul Hoffman, *The Feds, Lies, and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, 66 S. CAL. L. REV. 1453, 1503 (1993).

40. Jacobi, *supra* note 39, at 810 (quoting PAUL CHEVIGNY, *EDGE OF THE KNIFE: POLICE VIOLENCE IN THE AMERICAS* 107-08 (1995)).

41. AGATHOCLEOUS, *supra* note 15 *passim*.

42. HUMAN RIGHTS WATCH, *supra* note 32, at 86.

43. Laurie L. Levenson, *The Future of State and Federal Civil Rights Prosecutions: The Lessons of the Rodney King Trial*, 41 UCLA L. REV. 509, 537 (1994).

44. *Id.* at 536-37.

drunk or using drugs at the time or have a history of such use. Meanwhile, police officers have inherent credibility by virtue of their position.⁴⁵

Patterns of difficulties of federal prosecution of law enforcement officers are found in Criminal Section activities from fiscal years 1984 to 1995. In these data, reported directly by the Criminal Section for the time period overlapping this study's analysis, the Criminal Section reports a higher success rate for its general civil rights docket⁴⁶—for example, cases involving matters such as racial violence and housing interference—than its rate of success in law enforcement misconduct cases which include police brutality.⁴⁷ Studies have repeatedly shown that it is more difficult to convict a police officer than any other defendant.⁴⁸ Overall, in these eleven years the Criminal Section had a 71% success rate in prosecuting law enforcement officers charged with civil rights violations.⁴⁹ By contrast there was a greater than 95% success rate for prosecuting non-law enforcement individuals charged with civil rights violations.⁵⁰ The latter high success rate results from the small number of acquittals in the non-law enforcement category.

In fiscal year 2001, the Criminal Section was successful in 100% of its non-law enforcement prosecutions and had an 80% success rate concerning law enforcement officials, and the combined overall success rate was 89%. Within the Criminal Section the success rate is based upon pleas plus convictions divided by the total number of pleas, convictions, and acquittals. A plea bargain is defined as a successful outcome; and the number of the Criminal Section's plea bargains and its success rates are given in Table 1, below. In contrast, there is the Section's conviction rate, calculated as the number of convictions divided by the number of convictions and acquittals. In

45. Freeman, *supra* note 26, at 724-25 (citing *Police Brutality: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 102d Cong. 120 (1991) (testimony of James Fyfe)).

46. *Id.* at 726 (citing an earlier edition of SUMMARY, *supra* note 2).

47. *Id.* at 723 (citing an earlier edition of SUMMARY, *supra* note 2). Success is defined as an outcome of guilty, whether by conviction or plea. The success rate, expressed as a percentage, is the ratio of convictions and pleas over the total number of cases filed. For five years the Criminal Section's success rate for all cases was higher than its rate of success specifically in law-enforcement cases: 94.4% overall versus 77.8% in law enforcement cases in 1990, 89.3% versus 80.6% (1991), 85% versus 62.2% (1992), 73.6% versus 58.7% (1993) and 92.2% versus 78.7% (1994). See Table 1.

48. Levenson, *supra* note 43, at 541 (citing CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INTERNAL REPORT (1993), as showing that the conviction rate for civil rights prosecutions against police officers is consistently less than any other type of civil rights prosecution).

49. *Id.* at 541 (citing an earlier edition of SUMMARY, *supra* note 2, as showing that in the ten years from 1982-1992 the conviction rate from trials, as opposed to guilty pleas, is much less, at approximately 30%).

50. *Id.*; see also Paul Lieberman, *King Case Prosecutors Must Scale Hurdles of History*, L.A. TIMES, Feb. 7, 1998, at A1.

that same year, 2001, the Section's conviction rate for law enforcement officials was 52%.⁵¹

IV. POLICE ACCOUNTABILITY: CRIMINAL SECTION ACTIVITIES DURING FISCAL YEARS 1985-2001

The current study uncovers patterns of the Criminal Section's prosecutorial activities between fiscal years 1985 and 2001.⁵² Trends in its attempt to achieve accountability among law enforcement officers will be analyzed. There was substantial difficulty in obtaining specific elements of the Criminal Section data. While much of the information contains the number of law enforcement officials and non-law enforcement individuals, neither the number of complaints filed nor the number of FBI investigations is separated for law enforcement officials and non-law enforcement individuals in any fiscal year. For example, between fiscal years 1997 and 2001, the Criminal Section received 60,057 complaints and requested and reviewed about 15,863 FBI investigations. Data in Table 1 does not provide information about the allocation of these complaints and investigations between law enforcement officials and non-law enforcement individuals. Missing or incomplete data were found in other areas. For example, U.S. Congressional testimony permitted only estimates of the number of police brutality/police misconduct investigations. This article's analysis of a seventeen-year time period of the Criminal Section activities clarifies its behavior concerning law enforcement officials. The analysis will proceed by first examining Criminal Section activities in fiscal year 2001 to help readers interpret the data, then providing an overview of the seventeen-year time period and a focus upon the most recent five-year time period.

51. SUMMARY, *supra* note 2.

52. The analysis presented herein is based on data compiled by the Criminal Section, itself, summarizing its investigative and prosecutorial activities. SUMMARY, *supra* note 2. The data is reproduced in this article in Table 1. All of the data discussed in this section of the article (§ IV) for which a source is not otherwise provided comes from the SUMMARY either directly or derivatively.

TABLE 1⁵³
 SUMMARY OF CRIMINAL SECTION ACTIVITIES, FISCAL YEARS
 1985-2001

Fiscal Year	1985		1986		1987	
	Total	LE	Total	LE	Total	LE
Complaints	9044		7546		7348	
FBI Investigations	2970		2792		2826	
New Grand Juries	56	40	49	34	57	37
Indictments	35		35		40	
Informations	10		14		18	
Cases Filed	45	30	49	35	58	40
U.S. Att'y Participation (% of cases filed)	38		63		20	
Defendants	106	67	112	70	105	74
Trials	30	20	34	24	24	20
Convictions	41	29	55	30	17	10
Pleas	36	19	41	16	36	24
Acquittals	21	15	20	17	17	13
Success Rate (%)	77.8	75	82	72	75.7	72.3

53. The data in this table has been reproduced from SUMMARY, *supra* note 2.

TABLE 1 (continued)

Fiscal Year	1988		1989		1990	
	Total	LE	Total	LE	Total	LE
Complaints	7603		8053		7960	
FBI Investigations	2898		3177		3050	
New Grand Juries	44	29	40	25	47	25
Indictments	35		26		30	
Informations	8		34		36	
Cases Filed	43	29	60	18	66	23
U.S. Att'y Participation (% of cases filed)	31		8		14	
Defendants	71	49	85	22	101	37
Trials	30	20	23	21	14	8
Convictions	21	11	23	20	17	5
Pleas	50	34	68	13	51	9
Acquittals	26	22	10	10	3	3
Success Rate (%)	70.3	64.3	87.5	73	94.4	77.8

TABLE 1 (continued)

Fiscal Year	1991		1992		1993	
	Total	LE	Total	LE	Total	LE
Complaints	9835		8599		9620	
FBI Investigations	3583		3212		3026	
New Grand Juries	63	41	74	46	51	30
Indictments	44	26	38	21	34	18
Informations	25	10	26	6	25	10
Cases Filed	69	36	64	27	59	28
U.S. Att'y Participation (% of cases filed)	31		38		27	
Defendants	137	67	112	59	97	50
Trials	26	16	18	12	30	18
Convictions	36	26	16	6	36	16
Pleas	73	24	80	22	45	21
Acquittals	13	12	17	17	29	26
Success Rate (%)	89.3	80.6	85	62.2	73.6	58.7

TABLE 1 (continued)

Fiscal Year	1994		1995		1996	
	Total	LE	Total	LE	Total	LE
Complaints	8342		8864		11721	
FBI Investigations	2633		2370		2619	
New Grand Juries	64	34	68	38	70	37
Indictments	40	18	46	17	50	18
Informations	36	16	37	10	29	4
Cases Filed	76	34	83	27	79	22
U.S. Att'y Participation (% of cases filed)	29		30		23	
Defendants	139	46	138	50	128	33
Trials	23	15	24	7	22	12
Convictions	22	12	32	6	22	10
Pleas	81	25	75	23	85	19
Acquittals	11	10	13	8	14	14
Success Rate (%)	90.4	78.7	89.2	78.4	86.9	64.4

TABLE 1 (continued)

Fiscal Year	1997		1998		1999	
	Total	LE	Total	LE	Total	LE
Complaints	10891		12192		12132	
FBI Investigations	3321		3802		3664	
New Grand Juries	68	31	78	37	72	36
Indictments	54	20	58	31	58	30
Informations	23	5	21	8	31	6
Cases Filed	77	25	79	39	89	36
U.S. Att’y Participation (% of cases filed)	29		29		38	
Defendants	189	67	153	74	138	58
Trials	19	10	27	14	33	18
Convictions	36	9	38	14	26	11
Pleas	81	19	128	34	72	20
Acquittals	6	4	8	5	23	20
Success Rate (%)	95.1	87.5	94.8	88.6	80.9	60.8

TABLE 1 (continued)

Fiscal Year	2000		2001	
	Total	LE	Total	LE
Complaints	12404		12438	
FBI Investigations	2835		2241	
New Grand Juries	76	48	65	40
Indictments	55	28	52	32
Informations	29	12	42	17
Cases Filed	84	40	93	49
U.S. Att’y Participation (% of cases filed)	19		29	
Defendants	122	66	191	97
Trials	37	28	21	16
Convictions	34	25	18	14
Pleas	78	29	101	42
Acquittals	16	16	13	13
Success Rate (%)	87.4	77.1	89.4	80

An initial understanding of the data can be accomplished by examining activities in fiscal year 2001, the most recent data available. The Criminal Section’s *Summary* gives the total number of complaints for all cases within its jurisdiction (12,348 in fiscal year 2001, the highest number of complaints in any fiscal year during this period) and FBI investigations (2241 in fiscal year 2001), but both of those totals include claims against non-law enforcement officials.⁵⁴ These data do not provide a complete picture of the extent of law enforcement officers’ civil rights violations because law enforcement complaints and investigations are not separated out from the others until the category “Number of New Grand Juries” (40 law enforcement officers in fiscal

54. Were the information available regarding the number of complaints against and investigations of law enforcement officers and the number of cases deferred to the states, a determination would be permitted of the percentage of pleas, convictions and acquittals of law enforcement officers compared to the number of complaints against and FBI investigations of law enforcement officers. That comparison is impossible to make given the lack of data.

year 2001). For this category and the remaining categories the number of law enforcement and non-law enforcement cases can be studied and comparisons can be drawn between these types of cases. Also listed are the total number of cases filed against law enforcement officers (49 in fiscal year 2001), the number of law enforcement officers prosecuted (97 in fiscal year 2001), the number of law enforcement officers pleading guilty (42 in fiscal year 2001), the number of convictions of law enforcement officers (14 in fiscal year 2001), and the number of acquittals (13 in fiscal year 2001). The number of officers who pled guilty or were convicted (56 in fiscal year 2001) was the highest total in the past seventeen years. Of the cases going to trial, the conviction rate of law enforcement officers was 52% in fiscal year 2001, compared to the 100% conviction rate for all other categories of civil rights violations in that year. The conviction rate and success rate are calculated differently, the former involving only convictions and acquittals, and the latter including pleas as a successful outcome.⁵⁵ An overview of the seventeen-year period will develop broad trends and will be followed by an examination of the Section's activities in the most recent five fiscal years (1997 to 2001).

The number of law enforcement defendants prosecuted by the Criminal Section presents an irregular pattern between fiscal year 1985 and fiscal year 2001. Fifty-eight law enforcement defendants was the mean number of law enforcement defendants per fiscal year, but there was significant variation around this mean. The lowest number of law enforcement defendants was 22 in fiscal year 1989, and the highest number was 97 defendants in fiscal year 2001. During these seventeen fiscal years, the Criminal Section increased their jurisdiction in two major areas. New prosecutions could be brought under the Freedom of Access to Clinic Entrances Act of 1994⁵⁶ and 18 U.S.C. § 247,⁵⁷ which was substantially amended in 1996. Between fiscal years 1996 and 1997, when the amendments to the latter statute would have been applied, there was a major shift in the number of law enforcement defendants prosecuted by the Criminal Section—from 33 to 67 defendants. The 1997 level was retained through fiscal year 2000; at that point there was a one-third increase in fiscal year 2001 when, as noted above, the number of defendants reached 97, its highest number. The number of complaints varied considerably

55. I calculated the conviction rate as the number of convictions divided by the number of convictions and acquittals. The Justice Department also uses the category of success rate, which is the number of convictions and pleas divided by the number of convictions and pleas and acquittals. As will be discussed below, pleas are one important part of the pattern of criminal section outcomes.

56. Freedom of Access to Clinic Entrances Act of 1994; 18 U.S.C. § 248 (2000).

57. 18 U.S.C. § 247 (2000) (protecting against damage to religious property and free exercise of religious beliefs, amended in 1996 to include prohibition of acts motivated by race, ethnicity, or color).

between fiscal year 1985 and fiscal year 1995, with a range from 7348 (fiscal year 1987) to 9835 (fiscal year 1991). In this eleven-year period the average number of complaints was 8437. The number of complaints had a substantial change between fiscal years 1996 and 2001. The highest number of complaints occurred between fiscal years 1998 and 2001, with an average of 12,291 complaints per year.

Table 1 reinforces the argument that the Criminal Section had greater difficulty in obtaining a successful outcome, conviction or plea, in federal prosecution of law enforcement officials than non-law enforcement individuals. In each of the seventeen fiscal years, it had a higher success rate for non-law enforcement individuals. Trials under 18 U.S.C. §§ 241 and 242 often have more than a single defendant, and this information is reflected in Table 1.⁵⁸ Once the Criminal Section brought a law enforcement case to trial, there was substantial difficulty in obtaining a conviction. Between fiscal years 1985 and 2001, there were 254 convictions and 225 acquittals, an average of 15 convictions and 13 acquittals per year. Yearly, the number of law enforcement convictions and all the acquittals had a wide variation. In seven fiscal years, there were more acquittals than convictions in law enforcement cases.⁵⁹ In three other fiscal years, there were only one or two more convictions than acquittals.⁶⁰ In the seventeen fiscal years discussed herein, law enforcement officials accounted for the vast majority of acquittals and in some years all acquittals. The Criminal Section was consistently more successful in non-law enforcement cases in obtaining convictions rather than acquittals; in these cases there were 236 convictions and 35 acquittals. At trial, the acquittal of a law enforcement official was a realistic possibility in contrast to acquittals in non-law enforcement cases.

At the trial level, plea bargains represent the most frequent outcome in both law enforcement and non-law enforcement cases. In many years the total number of pleas in both categories is greater than the combined total of convictions and acquittals; focus especially on fiscal years 1987 through 1992. More pleas are found in non-law enforcement cases due to the larger number of these cases than law enforcement cases. In the law enforcement category, between fiscal years 1995 and 2001, this pattern of a greater number of pleas occurred in four of the seven years; the main exception is law enforcement officials in fiscal year 2000 when there were 25 convictions and 29 pleas, or 53% pleas. The highest ratio between pleas and convictions for non-law

58. For any given year, compare the total number of defendants with the total number of cases.

59. See Table 1. There were more acquittals than convictions in fiscal years 1987, 1988, 1992, 1993, 1995, 1996, and 1999.

60. See Table 1. There were only one or two more convictions than acquittals in fiscal years 1990, 1994, and 2001.

enforcement officials was in fiscal year 2001, when there were 18 convictions and 101 pleas, or 85% pleas. Recently, in fiscal years 2000 and 2001, there have been a substantially greater percentage of pleas for non-law enforcement cases than law enforcement cases.

Focus upon the most recent five-year time period (fiscal years 1997 to 2001) gives appropriate parameters to the scope of the Criminal Section's path to investigation and indictment of law enforcement officers. The 1997 to 2001 period demonstrates greater government activity than the previous five-year time period in almost every dimension. During the same period, the Criminal Section received 60,057 complaints and requested and reviewed 15,863 FBI investigations. Matters about law enforcement officers were presented to 192 grand juries based upon prosecutors bringing 141 indictments and 48 criminal informations. There were steady patterns of indictments during the last four fiscal years with an average of 30 indictments per year. Criminal Section attorneys brought 29 criminal informations during fiscal years 2000 and 2001, and this number represents a marked increase from the total of 19 criminal informations for the three previous years, fiscal years 1997 to 1999. In the past five fiscal years, the Criminal Section filed 189 cases against law enforcement officers. The outcome of Criminal Section prosecutions of law enforcement officials in the last five fiscal years was 144 guilty pleas, 86 trials in which 73 defendants were convicted, and 58 acquittals.⁶¹ When considered over a five-year period, there are a limited number of cases moving from investigations, grand jury indictments, or prosecutorial informations to trials.

The five-year period from fiscal year 1997 to fiscal year 2001 shows a rapid filtering from civil rights complaints received, to FBI investigations conducted, to new federal grand juries convened. In Table 1A, two patterns are shown: relationships between complaints received by the Criminal Section and FBI investigations, and relationships between FBI investigations and new grand juries concerning law enforcement officials. In these five fiscal years, the FBI investigated an average of 26.4% of complaints filed with the Criminal Section. Only 2.3% of the FBI investigations develop into grand juries, and approximately one-half of the grand juries, or an average of 1.2% of FBI investigations, concern law enforcement officials.⁶² Scholars should search for and obtain additional information to clarify U.S. Department of Justice prosecutorial activities about law enforcement officials.

61. In each jury trial, there can be one or more defendants. The Department of Justice did not provide information on the range of the number of defendants in each trial.

62. Determination of Department of Justice and FBI criteria for which complaints merit an FBI investigation requires analysis of their internal rules and memoranda.

TABLE 1A⁶³
 SUMMARY OF CRIMINAL SECTION ACTIVITIES, FISCAL YEARS
 1997-2001

Fiscal Year	Complaints	FBI Investigations (Inv./Comp.)	New Grand Juries: Total (GJT/Inv.)	New Grand Juries: LE (GJLE/Inv.)
1997	10891	3321 (30.5%)	68 (2.0%)	31 (1.0%)
1998	12192	3802 (31.2%)	78 (2.0%)	37 (1.0%)
1999	12132	3664 (30.2%)	72 (2.0%)	36 (1.0%)
2000	12404	2835 (22.8%)	76 (2.7%)	48 (1.7%)
2001	12438	2241 (18.0%)	65 (2.9%)	40 (1.8%)
TOTAL	60057	15863 (26.4%)	359 (2.3%)	192 (1.2%)
AVERAGE FY '97-'01	12011	3172	72	38

Once an FBI investigation is completed, the Criminal Section chooses which cases to pursue and which to decline. Negotiations among attorneys within the Criminal Section and between Criminal Section attorneys and the FBI also affect these choices. Human Rights Watch obtained information on the Criminal Section's reasons for declining cases in fiscal year 1995, which appears to be a representative year of the Criminal Section's activities. Of the 2,830 declined cases, 497, or approximately 18%, were categorized as having a "lack of evidence of criminal intent," 482, or approximately 17%, as having "no federal offense evident," and 778, or approximately 27%, as having "weak or insufficient admissible evidence."⁶⁴ The U.S. Department of Justice does not provide data on or patterns concerning cases that are deferred to states for prosecution. Jacobi proposes a new criminal law that supplements current federal authority and would permit more active involvement by the

63. The data in this table is derived from SUMMARY, *supra* note 2.

64. Jacobi, *supra* note 39, at 810-11 (*citing* HUMAN RIGHTS WATCH, *supra* note 32, at 389-91).

Department of Justice in combating police brutality.⁶⁵ The main focus of the new authority is serious police misconduct cases that go without state and local prosecution because these officials failed to pursue the case, or pursued it half-heartedly, and the Criminal Section determined they could not prosecute because the specific intent requirement was not present.⁶⁶

Information about the number of FBI investigations concerning police brutality and police misconduct has been difficult to obtain. Estimates for two parts of the time period under investigation were found. First, in a 1991 U.S. House Judiciary Hearing, William Baker, Assistant Director, Criminal Division, Federal Bureau of Investigation, said: "In carrying out this jurisdiction, the FBI places its highest priority on cases concerning police brutality, which comprise 50 percent of the civil rights inquiries we initiate."⁶⁷ In the period immediately preceding this testimony, fiscal years 1985-91, the *approximate* number of police brutality/police misconduct investigations ranged from 1,490 (fiscal year 1985) to 1,790 (fiscal year 1991).⁶⁸ There were a declining number of investigations from fiscal year 1985 through fiscal year 1988, with a larger number of investigations from fiscal year 1989 to fiscal year 1991. The average number of law enforcement convictions and pleas in these seven fiscal years was 19 convictions and 20 pleas.

Second, the FBI's Civil Rights Program website indicates a recently increased emphasis on police misconduct issues between fiscal year 1997 and fiscal year 2000: "The average number of all federal civil rights cases initiated by the FBI from 1997-2000 was 3,513. Of those cases initiated, about 73% were allegations of color of law violations, and about 82% of those allegations concerned abuse of force with violence."⁶⁹ Since some of these cases are

65. Jacobi, *supra* note 39, at 811. The proposal is a new statute 18 U.S.C. § 242A which would permit federal prosecution of law enforcement officers who commit serious misconduct under color of state law, but only when local officials fail to act. The proposed statute only requires officers to engage in intentional or reckless harm to individuals' civil rights rather than the higher standard of specific intent to deprive a victim of his civil rights.

66. *Id.*

67. *Police Brutality: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 102d Cong. 7 (1991) (statement of William Baker, Assistant Director, Criminal Division, Federal Bureau of Investigation). For another analysis of police brutality, see JAMES H. SKOLNICK & JAMES J. FYFE, *ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE* (1993).

68. Based on the substance of the testimony of Mr. Baker quoted above, see *supra* note 67 and accompanying text, these numbers are calculated as 50% of the total number of investigations in the identified year, as shown in Table 1.

69. FEDERAL BUREAU OF INVESTIGATION, *COLOR OF LAW*, at <http://www.fbi.gov/hq/cid/civilrights/color.htm>.

counted more than once, the police misconduct issues constitute 60%⁷⁰ of the total number of civil rights cases initiated in the period between fiscal year 1997 to fiscal year 2000. The estimated number of FBI police brutality/misconduct investigations for the four fiscal years 1997 to 2000 averages 2,564 investigations per year. In the same period, the average number of cases filed against law enforcement personnel was 35 and the average number of such defendants was 66. There was an average of 17.5 trials per year, with a high-water mark of 28 trials in fiscal year 2000. The average number of convictions and pleas in these fiscal years was 14.75 and 25.5, respectively. The recent data reflects a lower average number of convictions and a slightly higher number of pleas than in fiscal years 1985 to 1991. This data, again, reflects the small number of law enforcement convictions and pleas when contrasted with the number of FBI investigations, even while there is increased U.S. Department of Justice and FBI emphasis on police misconduct.

Further exploration of the recent time period from fiscal year 1998 to fiscal year 2001 indicates that the Criminal Section has increased its focus upon law enforcement defendants when compared to all defendants. From fiscal years 1998-2001, there was a marked increase in the percentage of cases going to trial concerning law enforcement defendants when compared to the previous three fiscal years. There was a particular increase in fiscal years 2000 and 2001, and the last four fiscal years were at or above the mean percentage of law enforcement defendants for the last seven fiscal years. In 2000 and 2001, the Criminal Section increased the number of grand juries for law enforcement officials to 88 grand juries, which represents a 20% increase from the 73 grand juries in fiscal years 1998 and 1999.

TABLE 2⁷¹
LAW ENFORCEMENT DEFENDANTS, CRIMINAL JUSTICE SECTION,
FISCAL YEARS 1995-2001

Fiscal Year	Total Number of Defendants (a)	Number of Law Enforcement Defendants (b)	Percent (b)/ (a) * 100
1995	138	50	36.2
1996	128	33	25.8
1997	189	67	35.4

70. Eighty-two percent of seventy-three percent of the total number of investigations is equal to sixty percent of that total.

71. The data in this table is derived from SUMMARY, *supra* note 2.

1998	153	74	48.3
1999	138	58	42.0
2000	122	66	54.1
2001	191	97	50.7
TOTALS	1059	445	42.0

V. CONCLUSION

The U.S. Department of Justice Civil Rights Division, Criminal Section is seriously concerned about problems of civil rights in American society, and individual and law enforcement officials' violation of individual's civil rights. The Section acts to deter abuse of law enforcement authority through a limited number of carefully selected cases that establish parameters of acceptable police conduct among federal and state law enforcement officials. The Criminal Section and the FBI engage in a complex federalism relationship when interacting with state and local officials concerning criminal prosecution of police misconduct. The Criminal Section's prosecution strategy is deferential to state and local prosecutions of law enforcement misconduct.

The data analysis in this study examined Criminal Section prosecutions of violation of individuals' civil rights from fiscal year 1985 to fiscal year 2001. In each year of the seventeen-year period, only a small percentage of complaints presented to the Department and FBI investigations resulted in grand jury presentments and trials. The analysis provided substantial evidence that once the Criminal Section decided to prosecute a law enforcement officer, the Criminal Section had substantial difficulty in obtaining a conviction. The Criminal Section also had greater difficulty obtaining a successful prosecutorial outcome, conviction or plea, for law enforcement officials than non-law enforcement individuals.

The study demonstrated the importance of guilty pleas in resolving cases. Pleas were the dominant outcome in cases that the Criminal Section prosecuted. When law enforcement officials are convicted for federal civil rights charges, federal prosecutors could develop strategies that enhance the ability of state revocation officials, such as Peace Officer Standards and Training Boards, to take action against state law enforcement officials. In matters concerning law enforcement officials' violation of an individual's civil rights which are not brought to trial, federal prosecutors could share information with these state revocation officials. This information about police misconduct can allow state revocation officials to follow due process procedures which leads to removal or other penalties against a law enforcement officer's license. These interactions between federal and state officials could enhance police accountability.

Professor Roger Goldman's article in this issue offers possibilities of cooperation between federal officials and state officials, including Peace Officer Standards and Training Boards, to achieve police accountability. States play a significant role in redressing police misconduct. In law enforcement accountability, states are not dependent upon the federal government for fiscal or administrative assistance.⁷² In the last twenty years, forty-four (44) states have created legislation or administrative rules that allow decertification/revocation of law enforcement licenses for officer misconduct and provide positive signals to the public about police integrity and competence.⁷³ States vary in the scope of law enforcement activities that are subject to decertification/revocation, and there are varying degrees of administrative capabilities and authority to implement decertification/revocation legislation. In almost all states with law enforcement revocation authority, conviction of a felony will lead to permanent loss of license; in addition, some states allow revocation for misdemeanor convictions. In a recent article, Professor Goldman and I have discussed several states with active police decertification programs.⁷⁴

Can federal prosecutorial activities, successful or not, assist state practices for law enforcement decertification programs?⁷⁵ Possible cooperative linkages between the federal Criminal Section and state decertification activities can include new federal legislative and regulatory authority to the Criminal Section officials to share investigative information about law enforcement misconduct with state POST officials. Such new authority could ferret out law enforcement misconduct and ensure such officers' accountability and overcome current barriers to cooperation between federal and state authorities. Professor Goldman's article pursues arguments concerning federal prosecutors' use of plea bargains to require state peace officers to temporarily or permanently relinquish their law enforcement license as part of the agreement.⁷⁶

72. SAMUEL WALKER, *POLICE ACCOUNTABILITY: THE ROLE OF CITIZEN OVERSIGHT* 7 (2001).

73. Roger L. Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct*, 45 ST. LOUIS U. L.J. 541 (2000).

74. *Id.*

75. See Roger L. Goldman, *State Revocation of Law Enforcement Officers' Licenses and Federal Criminal Prosecution: An Opportunity for Cooperative Federalism*, 22 ST. LOUIS U. PUB. L. REV. 121 (2003).

76. *Id.*

